

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF UTAH**

COMPLAINANT:
UTAH INSURANCE DEPARTMENT

RESPONDENT:

ABSOLUTE TITLE
INSURANCE AGENCY
Attn.: Leonard Carson

3335 South 900 East, Suite 235
Salt Lake City, Utah 84106

ORDER ON HEARING
(Formal Hearing)

DOCKET No. 2006-045-PC
E-Case No. 1790

Mark E. Kleinfield,
Presiding Officer

License No. 105344

THIS MATTER CAME ON to be heard before the Commissioner of the Utah State Insurance Department ("Department") on August 16th, 2006 at 1:00 o'clock P. M. Mountain Time, with **Mark E. Kleinfield**, Administrative Law Judge, serving as designated Presiding Officer.

Said hearing being held at the Department's offices located at the Utah State Office Building, Room 3110, Salt Lake City, Utah 84114, having been convened at the designated time of 1:00 (1:09) P. M., August 16th, 2006 and adjourned at 1:45 P. M. on said same day.

Appearances:

M. Gale Lemmon, Assistant Attorney General, State of Utah, Attorney for Complainant, Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

Leonard Carson, President, Absolute Title Insurance Agency, Respondent, 3335 South 900 East, #220, Salt Lake City, Utah 84106.

By the Presiding Officer:

Pursuant to a July 31st, 2006 Notice of Conversion to Formal Proceeding and Notice of Formal Hearing and a telephone Continuance thereafter a hearing was conducted on August 16th, 2006 in the above-entitled proceeding. The Respondent was present at that time.

The hearing was convened and conducted as a **formal hearing** in accordance with Utah Code Ann., Sections 63-46b-6, 63-46b-7, 63-46b-8, 63-46b-9 and 63-46b-10 and Utah Administrative Code, Rule R590-160.

Both parties waived opening statements.

Thereafter, evidence was offered and received.

Witnesses:

For the Complainant Department:

1. Gerri Jones, Title Market Conduct, Property and Casualty Division, Utah State Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114.

For the Respondent:

1. Leonard Carson, 3335 South 900 East, #220, Salt Lake City, Utah 84106.

Both of who were sworn and testified.

Exhibits:

The Complainant Department offered the following exhibits:

1. The State pointed the Presiding Officer to the administrative records of the Respondent within the State's possession of which the Presiding Officer took administrative notice.

No formal exhibits were presented.

The Respondent offered the following exhibits:

1. **Respondent's Exhibit No. 1**, consisting of thirteen (13) pages, being a copy of "INSTRUCTIONS FOR TITLE ORGANIZATION LICENSE "packet" and attachments of the Utah Insurance Department.

Argument followed.

The Presiding Officer being fully advised in the premises and taking administrative notice of the files and records of the Department, now enters his *Findings of Fact*, *Conclusions of Law*, and *Order*, on behalf of the Department:

FINDINGS OF FACT

1. The *Utah Insurance Department* ("Department") is a governmental entity of the State of Utah. The Department as per Utah Code Ann. Section 31A-2-101 is empowered to administer the *Insurance Code*, Title 31A, Utah Code Ann., 1953, as amended.

2. The Respondent, *Aabsolute Title Insurance Agency*, is:

a. a title insurance agency in the State of Utah and maintains a present business address of 3335 South 900 East, Suite 235, Salt Lake City, Utah 84106; and

b. is presently licensed by the Department to conduct a title insurance agency business holding License No. 105344.

3. The Respondent failed to file its Annual Report and Controlled Business Report by the due date of April 30, 2006.

4. No filing or response being had an informal proceeding was initiated on July 11, 2006 by the Department and an initial order issued.

5. The Respondent on July 25, 2006 made a timely request for hearing.

6. a. On July 31st, 2006 a Notice of Conversion to formal Proceeding and Notice of Hearing was issued and sent to the Respondent setting the present matter for hearing on August 15th, 2006 at 9:00 o'clock A. M..

b. Based on a telephone request from the parties the matter was continued to August 16th, 2006 at 1:00 o'clock P.M..

Analysis

7. a. Both the Respondent and the Department in substance concurred as to the *basic chronology* and *core facts*.

b. The record now being complete sets forth competent and credible evidence for the entry of the following analysis.

8. The question(s) presented is:

a. "Whether the Department has presented sufficient evidence to show that the Respondent failed to file its annual report as required?"

b. "Whether as per Utah Administrative Code R590-160 as to the above and foregoing "issue" or "question" the Department has so shown such evidence by a "preponderance of the evidence" sufficient to carry the Department's burden of proof?"

9. The Respondent acknowledged on the record that the facts were accurate, but presented a "legal" argument that it in essence did no business and did not have to file.

10. The Respondent while not appearing to have been in business a substantial period of time is charged with knowing the requirements of the relevant statutes and rules which to the Administrative Law Judge appear relatively straight-forward and simple to understand. An annual report is required whether one has a million dollars or no dollars in revenues or business. The Respondent did not timely file its annual report.

BASED ON THE ABOVE AND FOREGOING FINDINGS OF FACT and

analysis the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Respondent failed to file its annual report as required by law.

2. The Respondent does not have any justifiable reason as to why it did not file its annual report.

3. The Department's initial July 11th, 2006 informal proceeding order as to a \$1,000.00 forfeiture should be amended to a \$500.00 forfeiture¹.

4. The Respondent's actions in requesting and having a hearing while permissible as a right based on due process are to some extent a misuse of the system.²

AND BASED ON THE ABOVE AND FOREGOING CONCLUSIONS OF LAW

the Presiding Officer enters the following:

ORDER

WHEREFORE, IT IS ORDERED that:

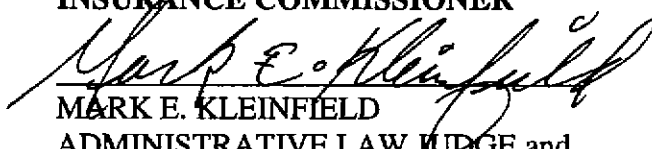
1. The Respondent shall file its Annual Report for the calendar year 2005, if not already done so, within 10 days of the date of the imposition of the penalty by the Title and Escrow Commission.

IT IS FURTHER RECOMMENDED THAT THE TITLE AND ESCROW COMMISSION IMPOSE THE FOLLOWING PENALTY:

2. The Respondent be assessed an administrative forfeiture in the amount of \$500.00, to be paid within 30 days of the date of the imposition of the penalty by the Title and Escrow Commission.

DATED and ENTERED this 12th day of September, 2006.

**D. KENT MICHIE
INSURANCE COMMISSIONER**


**MARK E. KLEINFELD
ADMINISTRATIVE LAW JUDGE and
PRESIDING OFFICER**

Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, Utah 84114
Telephone: (801) 537-9246/Facsimile: (801) 538-3829
MKleinfeld@utah.gov

¹ The ALJ in a "moment of what might be labeled 'soft heartedness' ", but rather hoped for as "instruction", while reducing the instant forfeiture based on a "good faith" legal argument by the Respondent, for the record points out that ANY future failures to file by the present Respondent will be dealt with great severity, including possible (probable) suspension and or revocation

² Direct contact with Department personnel as suggested in the initial Informal Order may well have resolved the instant circumstance without the necessity of hearing and expended time herein by both the State and the Respondent.

IMPOSITION OF PENALTY

By a vote of 4 to 0, taken in open meeting on this date, the Title and Escrow Commission hereby disagrees with the penalties recommended in paragraph 2 in the Order herein above, and imposes an administrative forfeiture of \$1,000.00.

Dated this 15 day of September, 2006.



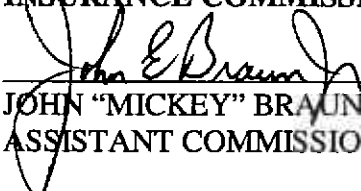
DARWIN L. JOHNSON, Chairman
Title and Escrow Commission

CONCURRENCE BY DEPARTMENT

Upon behalf of the Utah Insurance Department I hereby concur with the penalties imposed by the Title and Escrow Commission.

Dated this 15 day of September, 2006.

D. KENT MICHIE
INSURANCE COMMISSIONER



JOHN "MICKEY" BRAUN
ASSISTANT COMMISSIONER

ADMINISTRATIVE AGENCY REVIEW

Administrative Agency Review of this Order may be obtained by filing a Petition for Review with the Commissioner of the Utah Insurance Department within thirty (30) days of the date of entry of said Order consistent with Utah Code Ann. Section 63-46b-12 and Administrative Rule R590-160.

Failure to seek agency review shall be considered a failure to exhaust administrative remedies. (R590-160 and Section 63-46b-14)

JUDICIAL REVIEW

As an "Formal Hearing" after agency review judicial review of this Order may be obtained by filing a petition for such review consistent with Utah Code Ann. Section 63-46b-16.

CERTIFICATE OF MAILING

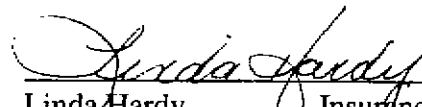
I do hereby certify that on this date I mailed, by regular mail, postage prepaid, a true and correct copy of the attached:

ORDER ON HEARING

To the following:

Absolute Title Insurance Agency
Attn: Leonard Carson
3335 South 900 East, Suite 235
Salt Lake City, UT 84106

DATED this 18th day of September, 2006


Linda Hardy Insurance Technician
Utah Department of Insurance
State Office Building, Room 3110
Salt Lake City, UT 84114-6901